CHEVRON U.S.A. Inc.

IBLA 86-1284 Decided September 12, 1988

Appeal from a decision of the Director, Minerals Management Service, affirming final determination of Regional Manager, Lakewood Regional Compliance Office, Minerals Management Service, partially denying royalty refund request. MMS-85-0086-OCS.

Affirmed in part, vacated in part and remanded.

1. Accounts: Refunds--Outer Continental Shelf Lands Act: Refunds

One filing a request for repayment of excess royalties, paid with respect to gas produced from a particular Outer Continental Shelf oil and gas lease, is not precluded by the 2-year filing provision in section 10(a) of the Outer Continental Shelf Lands Act, 43 U.S.C. | 1339(a) (1982), from recovering monies paid when the request was filed within the 2-year period but failed to correctly identify the lease and the amount paid.

APPEARANCES: M. Hampton Carver, Esq., Susan Hopkins Meyers, Esq., and R. C. Fiore, Esq., New Orleans, Louisiana, for appellant; Cass C. Butler, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Chevron U.S.A. Inc. (Chevron) appeals from a decision of the Director, Minerals Management Service (MMS), dated March 25, 1986, affirming a May 14, 1985, final determination of the Regional Manager, Lakewood Regional Compliance Office, MMS, partially denying its royalty refund request.

The substantial facts in this case are not in dispute. On September 23, 1983, Chevron filed a letter with MMS expressly requesting a refund in the amount of $213,063.87 with respect to royalty paid in October 1981 on gas produced between November and December 1978 from Outer Continental Shelf (OCS) oil and gas lease OCS-G-2226, situated in the West Cameron Block 534, off the coast of Louisiana. Chevron explained in its letter as follows:

> An adjusted payment was sent to the USGS [U.S. Geological Survey] in October 1981 which reallocated a portion of the production from OCS-G-2224, 2225, and 2226 into the newly unitized area 91-016152. However, the portion from OCS-G-2226 which was

reallocated to the new unit was not credited from the original payment, thus resulting in a double payment of royalties. [1/]

On February 21, 1985, the Regional Manager issued a preliminary determination of Chevron's refund request. With respect to gas produced from lease OCS-G-2226 in November 1978, the Regional Manager concluded that Chevron was not entitled to a refund for any overpayment of royalty because, according to MMS records, Chevron had not in October 1981 adjusted the royalty originally paid in December 1978 and the 2-year filing period set by section 10(a) of the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. | 1339(a) (1982), for requesting a refund with respect to the original payment had since passed. The Regional Manager noted, however, that Chevron had in October 1981 adjusted the royalty originally paid in December 1978 for gas produced in November 1978 from lease OCS-G-2224, thereby resulting in an overpayment. Nevertheless, the Regional Manager concluded that a refund was barred by the 2-year provision "[b]ecause Chevron has never submitted a refund request to recover the overpayment on Lease No. OCS-G 2224." With respect to gas produced from lease OCS-G-2226 in December 1978, the Regional Manager concluded that Chevron was entitled to a refund for only a portion of the amount requested ($104,215.03). According to the Regional Manager, that portion was the total amount by which Chevron had in October 1981 adjusted the royalty originally paid in January 1979 for gas produced from lease OCS-G-2226 in December 1978, thereby resulting in an overpayment. The remainder of the amount of the refund requested with respect to gas produced in December 1978 ($5,604.22) was, according to the Regional Manager, attributable to the May 1979 adjustment by Chevron and, therefore, any refund was barred by the 2-year provision of section 10(a) of OCSLA. Accordingly, the Regional Manager held that Chevron was entitled to a total refund of $104,215.03.

On March 14, 1985, Chevron filed a response to the Regional Manager's February 1985 preliminary determination. In its response, Chevron acknowledged that, although it had requested a refund of $103,244.62 with respect to royalty paid in October 1981 on gas produced from lease OCS-G-2226 in November 1978, "the actual overpayment was attributable to Lease OCS-G-2224." Chevron explained that in September 1983 it had recognized that it had made a "substantial overpayment" of royalty owed on production from "one or more of the [three] leases [OCS-G-2224, OCS-G-2225, and OCS-G-2226] that collectively comprise the West Cameron Blocks 532, 533 and 534." However, due to the "complexity" of a November 1978 reassignment of wells within those leases among two units and one non-unit, Chevron had "erred in identifying the precise leases to which the overpayments should be allocated." Chevron concluded that it should not be denied a refund on the basis of a "filing error"

1/ Attached to Chevron's refund request was a "Report of Sales and Royalty Remittance," dated Sept. 6, 1983, with respect to gas produced from oil and gas lease OCS-G-2226 between November and December 1978. The report states that it is intended to correct the adjustment made October 1981 and indicates that Chevron should be accorded a total credit of $103,244.62 and $109,819.25 for gas produced, respectively, in November and December 1978, for a total credit of $213,063.87.

where MMS recognized that an overpayment had occurred and Chevron had made a good faith attempt to recover the overpayment.

In his May 1985 final determination, the Regional Manager reiterated the statements made in his February 1985 preliminary determination, concluding that Chevron was only entitled to a refund in the amount of $104,215.03. The Regional Manager also briefly addressed Chevron's March 1985 response, concluding that, "[i]n reviewing Chevron's refund request on Lease No. OCS-G 2226, MMS was not obligated to shoulder the burden of auditing Chevron's monthly payments on Lease No. OCS-G 2224." 2/

On June 13, 1985, Chevron appealed the Regional Manager's May 1985 final determination to the Director, MMS, contending that it should not be barred by the 2-year provision of section 10(a) of OCSLA from recovering $103,244.62 in royalty paid in October 1981 on gas produced from lease OCS-G-2224 in November 1978 where it had made a refund request for that amount in September 1983. Chevron also argued that the Regional Manager had incorrectly denied Chevron a refund in the amount of $5,604.22 with respect to royalty paid on gas produced from lease OCS-G-2226 in December 1978.

Chevron's appeal to the Director, MMS, was subjected to an extensive analysis by the Acting Regional Manager, as set forth in a September 4, 1985, memorandum to the Chief, Division of Appeals, MMS. The Acting Regional Manager concluded that Chevron's refund request for $103,244.62 in royalty paid for November 1978 production should be considered barred by the 2-year provision of section 10(a) of OCSLA because Chevron had failed to properly verify its lease accounts and file an appropriate refund request during the 2-year period following the October 1981 adjustment. The Acting Regional Manager stated that a proper verification would have disclosed that "[a]ll three of [the] lease accounts [OCS-G-2224, OCS-G-2225, and OCS-G-2226] were incorrect before the October 1981 adjustment, with the October 1981 adjustment, and with the adjustment proposed by the September 15, 1983, refund request." With respect to the $5,604.22 in royalty paid for December 1978 production, the Acting Regional Manager concluded that Chevron had failed to contradict the fact that the amount was attributable to a May 1979 royalty payment and, thus, was also barred by the 2-year limitation. The Acting Regional Manager recommended that Chevron's appeal be denied.

On January 27, 1986, Chevron filed a response to the Acting Regional Manager's September 1985 memorandum, reiterating its entitlement to a refund in the amount of $103,244.62 attributable to overpayments on lease OCS-G-2224 and $5,604.22 attributable to overpayments on lease OCS-G-2226.

2/ The Regional Manager also stated that Chevron was essentially seeking to "offset overpayments and underpayments between OCS lease accounts," which practice was not permitted by Solicitor's Opinion, 88 I.D. 1090 (1981), and Mobil Oil Corp., 65 IBLA 295 (1982). However, as Chevron has raised only the question of the propriety of a refund in the amount of $103,244.62 with respect to royalty paid on gas produced from lease OCS-G-2224, we will confine ourselves to that question.

In his March 1986 decision, the Director affirmed the Regional Manager's May 1985 final determination. The Director concluded that Chevron was not entitled to a refund of $103,244.62 in royalty paid for November 1978 production because Chevron's refund request filed within the 2-year period following the October 1981 adjustment incorrectly identified the applicable lease and was, therefore, barred by the 2-year provision of section 10(a) of OCSLA. The Director also concluded that Chevron was not entitled to a refund of $5,604.22 in royalty paid for December 1978 production where Chevron had not even advanced a "colorable argument" in support thereof. Chevron has appealed from the Director's March 1986 decision.

On appeal, appellant concentrates exclusively on the propriety of MMS' denial of its request for a refund in the amount of $103,244.62 with respect to royalty paid on gas produced from lease OCS-G-2224 in November 1978 and asserts its entitlement to a refund in the amount of $5,604.22 with respect to royalty paid on gas produced from lease OCS-G-2226 in December 1978.

At the outset, it is important to note that MMS is correct in its assertion that appellant failed to properly verify its three lease accounts (OCS-G-2224, OCS-G-2225, and OCS-G-2226) with respect to gas produced in November 1978. An analysis of those accounts was prepared by MMS (Attachment 8) and indicates in table form the royalties paid at various times and the royalties due (whether or not allocated to unit No. 91-016152) with respect to each of those accounts. In the case of lease OCS-G-2226, the analysis indicates that royalties in the amount of $177,314.97 were due and that appellant originally paid $180,368.59 in December 1978, leaving a positive balance of $3,053.62. By contrast, in the case of lease OCS-G-2224, the analysis indicates that royalties in the amount of $80,725.81 were due and that appellant originally paid $58,873.42 in December 1978 and paid an additional $179,966.82 in October 1981, leaving a positive balance of $158,114.43. Finally, the analysis indicates that, in the case of lease OCS-G-2225, royalties in the amount of $57,923.38 were due and that appellant originally paid $203,386.87 in December 1978 and deducted $203,386.71 in October 1981, leaving a negative balance of $57,923.22. Appellant has not challenged these figures.

It is clear from MMS' analysis that appellant overpaid royalties in October 1981 with respect to gas produced from lease OCS-G-2224 in November 1978. MMS does not dispute this. However, it is equally clear that appellant's September 1983 letter requested a refund only with respect to lease OCS-G-2226 and that no other refund request has been submitted. 3/ The record indicates that appellant did not pay any royalty in October 1981 with respect to gas produced from lease OCS-G-2226 in November 1978.

3/ As noted supra, the record indicates that appellant overpaid royalties in the amount of $3,053.62 with respect to gas produced from lease OCS-G-2226 in November 1978. However, it is MMS' position that appellant is not entitled to a refund for this amount where the overpayment occurred in December 1978, more than 2 years prior to appellant's refund request. Indeed, appellant has not asserted its entitlement to any refund.

[1] Section 10(a) of OCSLA provides that where it appears to the Secretary of the Interior that any person has paid in excess of what he was lawfully required to pay, "such excess shall be repaid * * * if a request for repayment of such excess is filed with the Secretary within two years after the making of the payment." Appellant's September 1983 request for repayment was clearly timely under this statute, having been filed within 2 years of the October 1981 payment. However, it is admitted that the request incorrectly identified the applicable lease. 4/ Thus, the primary question raised by this case is whether the September 1983 request nevertheless may be considered an adequate request for a refund filed within the 2-year period set by section 10(a) of OCSLA.

Section 10(a) of OCSLA does not specify what is required in a "request for repayment." 43 U.S.C. | 1339(a) (1982). Nor has the Department promulgated any regulations implementing that statutory provision. However, in Solicitor's Opinion, 88 I.D. 1090 (1981), the Solicitor considered the question of what constitutes a proper "request for repayment." He concluded, considering the Department's handling of requests under other repayment statutes, that such a request "must be in writing, must ask for a specific amount, and must explain why the lessee considers the amount [paid] to have been excessive." Id. at 1099. In short, he held that the request "must give the Department enough information to rule on it." Id.

The Director concluded that appellant's September 1983 request, to the extent it referred to the wrong lease, did not comport with this standard. Appellant's September 1983 letter clearly stated that appellant had made an adjusted royalty payment in October 1981 with respect to gas produced from lease OCS-G-2226 in November 1978. The fact that appellant had actually overpaid royalties with respect to lease OCS-G-2224, rather than lease OCS-G-2226, does not detract from the fact that appellant had given the Department "enough information" to rule on the refund request with respect to lease OCS-G-2226. However, the letter clearly did not provide "enough information" to rule on a request with respect to lease OCS-G-2224 where the letter did not expressly seek a refund with respect to that lease.

Nevertheless, in Shell Offshore, Inc., 96 IBLA 149, 94 I.D. 69 (1987), appeal filed, Shell Offshore, Inc. v. United States, No. 391-87L (Cl. Ct. July 1, 1987), we concluded that an applicant under section 10(a) of OCSLA cannot be denied a refund because he has failed to comply with the substantive requirements regarding the form of a suitable request for repayment set forth in the Solicitor's Opinion. We based this conclusion on principles

4/ As noted supra, appellant's refund request was actually based on an aggregation of its three lease accounts (OCS-G-2224, OCS-G-2225 and OCS-G-2226) with respect to November 1978 production. The request, therefore, was inaccurate as to both the lease on which appellant had overpaid royalties in October 1981 and the actual amount of the overpayment with respect to any one lease. Nevertheless, to the extent the account for lease OCS-G-2224 reflects a substantial overpayment in October 1981, clearly encompassing the $103,244.62 refund requested by appellant, we will consider appellant's entitlement to a refund of that lesser amount.

of administrative law, namely that, whether regarded as substantive rules which had not been promulgated pursuant to proper rulemaking under 5 U.S.C. | 553 (1982) or as interpretive rules, such substantive requirements do not have the force and effect of law. 5/ Accordingly, we concluded that the only controlling standard regarding the proper form of a refund request was the "language of section 1339 itself." Id. at 173, 94 I.D. at 83. However, we noted that, while the statute requires that a request be in writing, "there is no language in the statute indicating the form the writing must take or specifying its substantive contents." We, therefore, held that only "some form of written request is required." 6/ Id. at 174, 94 I.D. at 83-84. In Conoco, Inc., 96 IBLA 384, 388 (1987), appeal filed, Conoco, Inc. v. United States, No. 553-87L (Cl. Ct. Sept. 3, 1987), we specifically held that MMS could not deny a refund request that failed to specify either the amount sought or the dates payments had been made. Likewise, even if appellant had failed to identify any lease in its September 1983 letter, we would have to conclude that it constituted an adequate request for repayment under section 10(a) of OCSLA at that time, as that section is interpreted by the Board. We conclude in this case that a request which fails to correctly identify the applicable lease is similarly sufficient so long as it indicates that a person is seeking a refund. Ernest F. Stembridge, 49 L.D. 533, 534 (1923). Nothing in section 10(a) of OCSLA or Departmental regulations specifies what should happen when a timely filed refund request fails to correctly identify the applicable lease.

As construed by the Board in Phillips Petroleum Co., 39 IBLA 393, 398 (1979), the purpose of the statutory 2-year period set for making refund requests is to require lessees to verify their accounts and to ascertain promptly the correctness of payments made. According to MMS, this purpose would not be served by recognizing a request where it is clear the lessee had failed to properly verify its accounts. We recognize, as noted supra, that appellant had, at the time it submitted its refund request, failed to properly verify its accounts. The request was inaccurate as to both the applicable lease and the amount by which appellant had overpaid any individual lease account. Nevertheless, the statute, unaided by any interpretation embodied in Departmental rulemaking at the time appellant's request was filed, essentially required an applicant for a refund only to verify that it had overpaid royalties and to notify the Department accordingly within the 2-year period. This appellant did. The statute simply did not require an applicant to verify the applicable lease, the date the overpayment had been made or the amount of the overpayment. Accordingly, we cannot say that a request for repayment which indicates a failure to verify the

5/ MMS also refers to a "Payor Handbook" as providing instructions on how to submit a refund request (Answer at 7). However, such a handbook, even assuming it is applicable to the question of what constitutes an adequate request for repayment, also clearly lacks the force and effect of law. Pamela S. Crocker-Davis, 94 IBLA 328, 332 (1986).

6/ We concluded, however, in Shell Offshore that "minimum requirements" must be met and that, henceforth, refund requests must "be written, identify the claimant, the leases affected, and the reasons a refund is sought." 96 IBLA at 174, 94 I.D. at 84.

claim in detail violates the purpose of the statute. 7/ In any case, appellant's September 1983 letter indicates that appellant was seeking to verify its lease accounts promptly, albeit erroneously. 8/

We are simply unwilling to deny an applicant its entitlement to a refund clearly permitted by section 10(a) of OCSLA in the absence of any statutory or regulatory language that expressly precludes such a result. To hold otherwise where appellant has plainly not slept on its rights would allow the United States to retain monies to which it would not under other circumstances be entitled, without serving any identified purpose of the statute. We do not think this is what Congress intended. See Burnett v. New York Central Railroad Co., 380 U.S. 424, 427 (1965).

However, while noting that a refund request must merely notify MMS that a person seeks a refund, we also concluded in Shell Offshore that the notice necessary to satisfy the 2-year provision of section 10(a) of OCSLA must be distinguished from the proof necessary to substantiate a request. 96 IBLA at 174-75, 94 I.D. at 84. Thus, in Conoco, we held that MMS should require an applicant for a refund to supply information necessary to adjudication of its request where that information has not been provided in that request. 96 IBLA at 388. Indeed, MMS should generally require an applicant to demonstrate entitlement to a refund, by supplying additional information where MMS determines that the information previously submitted with the request does not initially demonstrate that entitlement. Thus, an applicant who identifies a lease with respect to which no overpayment occurred should be afforded an opportunity by MMS to establish that it was actually entitled to a refund with respect to that lease or another lease. 9/ In any case, the validity of the applicant's claim must be determined apart from the question of whether its initial request constituted an adequate request for a refund within the 2-year period set by section 10(a) of OCSLA.

7/ Of course, the Department may promulgate regulations requiring an applicant to supply specific information and specifying the consequences of failure to provide any information or of providing inaccurate information.

8/ We note that appellant's September 1983 letter references not only lease OCS-G-2226 but leases OCS-G-2224 and OCS-G-2225 and an October 1981 adjusted royalty payment with respect to November 1978 production.

9/ We do not suggest that MMS undertake an extensive review of all of an applicant's lease accounts or engage in what MMS terms a "scavenger hunt" in order to determine whether the applicant is entitled to any refund where a preliminary review indicates that an applicant is not entitled to the specific refund requested. We merely require MMS to notify the applicant of the results of the preliminary review and afford the applicant an opportunity to demonstrate its entitlement by amending its request for repayment or otherwise. We do not view this as imposing any burden on MMS where MMS already issues a preliminary determination and invites the applicant's comments thereon. The burden of demonstrating entitlement will remain on the applicant.

It is clear from the record that appellant's September 1983 letter was not sufficient when submitted to substantiate appellant's request for a refund. Indeed, as noted supra, the record indicates that appellant had not made any adjusted royalty payment in October 1981 with respect to gas produced from lease OCS-G-2226 in November 1978. However, in issuing his February 1985 preliminary determination, the Regional Manager recognized that appellant had overpaid royalties in October 1981 with respect to gas produced from lease OCS-G-2224 in November 1978. Likewise, in responding to this preliminary determination, appellant recognized that the "actual overpayment was attributable to Lease OCS-G-2224," and asserted its entitlement to a refund in accordance therewith. However, rather than adjudicating appellant's entitlement to a refund with respect to that overpayment, MMS has concluded all along that a refund was barred by the 2-year provision of section 10(a) of OCSLA. As noted supra, that is not the case. Accordingly, we must vacate the Director's March 1986 decision to the extent it affirmed the Regional Manager's denial of appellant's request for a refund of $103,244.62 and remand the case to MMS for an adjudication of appellant's entitlement to a refund with respect to royalties paid on gas produced from lease OCS-G-2224 in November 1978. 10/

By contrast, appellant has presented no evidence indicating that the $5,064.22 requested with respect to royalties paid on gas produced from lease OCS-G-2226 in December 1978 is not attributable to royalties paid in May 1979 and is not, therefore, barred by the 2-year provision of section 10(a) of OCSLA where appellant's refund request was filed in September 1983. Phillips Petroleum Co., supra. Accordingly, we must affirm the Director's March 1986 decision to the extent it affirmed the Regional Manager's denial of appellant's request for a refund of $5,064.22.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part and vacated in part, and the case is remanded to MMS for further action consistent herewith.

John H. Kelly
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge

10/ In determining whether appellant is entitled to a refund, MMS is not bound by the $103,244.62 requested in appellant's September 1983 letter or thereafter. Rather, MMS may properly determine that appellant is entitled to $158,114.43, which the record indicates is the amount by which appellant actually overpaid royalties in October 1981 with respect to gas produced from lease OCS-G-2224 in November 1978.